

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN LEE RANDOLPH,

Defendant-Appellant.

UNPUBLISHED

January 25, 2005

No. 248075

Oakland Circuit Court

LC No. 2002-186743-FC

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82, one count of felon in possession of a firearm, MCL 750.224f, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent sentences of 28 months' to 15 years' imprisonment on the felonious assault and felon in possession convictions. The trial court also sentenced defendant to three concurrent terms of two years' imprisonment on the felony-firearm convictions. The felony-firearm convictions were to be served consecutive to defendant's sentences for felonious assault and felon in possession. Defendant appeals only his sentences for felonious assault and felon in possession. We affirm.

Defendant's sentence in this case is controlled by the legislative guidelines, MCL 769.31 *et seq.* If a trial court sentences a defendant within the guidelines, this Court will affirm the sentence unless there was an error in the scoring or inaccurate information in the presentence investigation report (PSIR) that was relied on to determine the defendant's sentence. MCL 769.34(10). If a defendant's sentence is within the sentencing guidelines, the defendant may only challenge an inaccuracy if the defendant raised the issue at sentencing, in a motion for resentencing, or in a proper motion for remand. *Id.*

Defendant argues for the first time on appeal that the trial court relied on inaccurate information in his PSIR when imposing sentence. He asserts that while some of the information was corrected on the record at sentencing, inaccuracies still existed regarding past convictions. Defendant did not raise this issue at sentencing, in a motion for resentencing, or in a motion to remand. Thus, the issue is not cognizable by this Court. *Id.* Further, defendant affectively waived his allegation of error when he affirmatively indicated at sentencing that no other

changes needed to be made to the PSIR other than those identified at the hearing. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Additionally, defendant has failed to provide factual support for his allegation of error. A “[d]efendant may not leave it to this Court to search for a factual basis to sustain or reject his position.” *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990).

Defendant also argues that the trial court should not have sent to the Department of Corrections (DOC) a PSIR with hand-written corrections on it, but should have retyped the PSIR before forwarding it on. Defendant cites *People v Walton*, 461 Mich 907; 623 NW2d 594 (1999), to support this argument. However, *Walton* states simply that a corrected version of the PSIR must be sent to the DOC. *Id.* at 907. It does not state the form in which such corrections need to be made. In this case, a PSIR containing accurate information was forwarded to the DOC. Therefore, we find this issue to be without merit.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello